

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 209 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME-TAX

Versus

RAIPUR MFG CO LTD

Appearance:

MR BB NAIK WITH MR MANISH R BHATT for Petitioner
MR MANISH J SHAH FOR MR JP SHAH for Respondent

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.R.DAVE

Date of decision: 09/02/99

ORAL JUDGEMENT (Per J.N.Bhatt, J.)

By this reference, the Income Tax Appellate Tribunal, Ahmedabad Bench has referred the following question for our opinion, under section 256 of the Income Tax Act, 1961:

"Whether on the facts and in the circumstances of

the case, the Tribunal was right in law in holding that the sums of Rs.6757 and Rs.5563 for A.Y. 79-80 and Rs.32,358 for A.Y.80-81 were allowable as deduction in computing the total income of the assessee."

After having considered the statement of facts and the relevant proposition of law, we are of the opinion that the ratio propounded by this Court in Commissioner of Income tax vs. Ashoka Mills Limited, 218 ITR 526 (Guj.) is squarely attracted to the present case. We are also in complete agreement with the said decision. The payment of royalty was held to be in course of the profit earning process and not for acquisition of an asset or right of a permanent character. It was, therefore, held by this Court in that case that it was deductible as revenue expenditure.

Therefore, the aforesaid question is answered in affirmative, i.e. against the revenue and in favour of the assessee. The reference, accordingly, stands disposed of with no order as to costs.

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(vjn)